

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

WEDNESDAY, THE 17TH OCTOBER 2007 / 25TH ASWINA 1929

CRP.No. 842 of 2006()

**CMA.30/2005 of PRINCIPAL SUB COURT, NORTH PARAVUR
OS.52/2002 of MUNSIFF COURT, NORTH PARAVUR
(IA. 704 /2005)**

REVN. PETITIONER: APPELLANTS/PETITIONERS/DEFENDANTS

**1. RUSHENDRAN @ ACHU,
S/O.AYYAPPAN, DEVASWOM PARAMBU,
THATTARUPARAMBIL HOUSE, CHERAI MURI,
PALLIPPURAM VILLAGE.**

**2. MURALI, S/O.AYYAPPAN,
DO. DO.**

**3. SHAJI, S/O.AYYAPPAN,
DO. DO.**

**4. AMMINI, W/O.AYYAPPAN,
DO. DO.**

BY ADV. SRI.DINESH R.SHENOY

RESPONDENTS: PLAINTIFF

**THILAKAN, S/O.KELLAN,
PAZHAMPILLIYIL AYYAMPILLY MURI,
PALLIPPURAM VILLAGE.**

**BY ADV. SRI.N.SUBRAMANIAM
SRI.M.S.NARAYANAN**

**THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 17/10/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

M.N.KRISHNAN, J

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C.R.P. No.842 OF 2006

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Dated this the 17th day of October 2007

ORDER

This revision petition is preferred against the order of the Principal Sub Court, North Paravur in C.M.A.No.30 of 2005 which in turn was filed against I.A.No.704/2005 in O.S.No.52/2002 of the Munsiff's Court, North Paravur.

2. Revision petitioners are defendants in the suit and the suit had been decreed ex parte on 25.2.2005. The case was listed on 16.2.2005. Now a perusal of the orders of the court below would reveal that there had been change of dates. It is averred that the case was listed on 25.2.2005 and his brother met with an accident on 24.2.2005. Therefore, it disabled the first defendant to come and give evidence and therefore opportunity has to be given. The fact remains that the suit was included in the list on 16.2.2005. Learned counsel for the petitioners would submit before me now that the date shown in the petition is a mistake and really the accident took place on 15.2.2005. Unfortunately, in this case no oral evidence had been adduced and documents are also not produced to prove the accident. If really, an

accident had taken place to his brother on the previous date when the suit was listed, naturally there will be anxiety for the members of the whole family and one cannot classify their absence on the next day as a deliberate or willful negligence. The principles to be followed in cases where an ex parte decree has to be set aside has been held in **Sreedhara Kurup v. Mickel(1968 KLT 599)** and in Plantation Corporation of **Kerala Ltd. v. Hussain(1998(1) KLT 1008)**. This court has cautioned that “it is largely a matter of wise discretion to be exercised by the Court bearing in mind the wholesome principle that the right of a party to be heard should be negatived only if there is gross negligence or gross carelessness and that if some steps have been taken and application for restoration has been made with some diligence and some evidence adduced making out a sufficient cause for absence, restoration should be ordered, minor misconduct or laches being corrected by the common curative of costs. Now the only question before me is whether an opportunity has to be given to the petitioners to establish the factum of accident. If really, his brother had been involved in an accident and admitted in a hospital, certainly there would be documentary evidence to establish the same. I am aware that sitting in the revisional jurisdiction, the court is only expected to consider whether there is any irregularity or illegality in the orders passed by the

court below. But, when the substantial justice has to be rendered, technicality shall not hold the field to negative a reasonable opportunity to a party to contest the case on merits, if it is truthful.

Therefore, I am inclined to interfere with the orders of the court below and set aside the same and remit back the matter to the trial court for fresh disposal. Petitioners, herein are given opportunity to produce documentary evidence as well as oral evidence in support of their respective contentions and the other side is also given an opportunity to adduce rebuttal evidence on those points.

Therefore, the order under challenge is set aside and the matter is remitted back to the court below for fresh consideration of the application to set aside ex parte decree. Parties are directed to appear before the court below on 17.11.2007.

M.N.KRISHNAN, JUDGE

Cdp/-